RECENT CASES.

AGENCY — VICE-PRINCIPAL.— A train dispatcher is not the fellow-servant of the employees engaged in moving the trains, but is as regards them a vice-principal so that the railroad company is liable for any injuries to such employees resulting from his negligence. *Lewis* v. *Leifert*, 11 Atl. Rep. 514 (Pa.). To the same effect is *East Tennessee, V. & G. R. Co.* v. *De Armond*, 37 Alb. L. J. 22 (Tenn.), collecting cases.

ASSETS — WHAT IS A CLAIM AGAINST THE GOVERNMENT.— By an act of Congress the amount of the fifteen and one-half million dollars of the Geneva award not paid out to those who had suffered actual loss was to be distributed to those who had paid increased premiums of insurance because of the risk from Confederate cruisers. *Held*, that on the bankruptcy of the defendant after the passage of the act this claim did not pass to the assignee in bankruptcy. It was a donation of the government, and not a claim because of a wrong done. *Taft* v. *Marsily*, 33 N. Y. Dail. Reg. 253 (N. Y. Sup. Ct.).

The same point was decided the same way in the Maryland Court of Appeals. *Ahrens* v. *Brooks*, 18 Md. L. J. 52. The question is also said to be pending before the United States Circuit Court at New Orleans.

CARRIERS — MISDELIVERY OF FREIGHT. — A was owner, shipper, and consignee of cattle, shipped upon defendant railroad, which gave receipts for the same. A indorsed the receipts to the plaintiff, a bank. The defendant delivered the cattle without an order from A to a third party, whom the defendant had in the receipt (or bill of lading) been directed to notify of the arrival of the cattle. *Held*, that the defendant was liable for the value of the stock, since the direction to notify a third party will not relieve a carrier from its duty to deliver to the consignee or his order. Moreover, it is the duty of a carrier to notify the consignee of the arrival of property if it is possible, and it seems that a direction in a bill of lading to notify certain persons is a plain indication, in the absence of further directions, that they are not the consignees. (See *Furman* v. *Ry. Co.*, 106 N. Y. 579.) *North Pa. R. Co.* v. *Commercial Nat. Bank*, 8 Sup. Ct. Rep. 266.

CARRIERS — RIGHTS OF PASSENGERS.— Defendant, a railroad company, took on board, not at a regular station, certain laborers engaged to take the place of strikers. These laborers were at that time protected from a mob by a strong police force. At the next regular station the train was attacked by a mob of strikers, and the plaintiff, a passenger in the same car with the laborers, was shot. *Held*, on a rehearing, Sheldon, C. J., and Magruder, J., dissenting, plaintiff can recover, as the defendant was not bound to take on passengers except at regular stations, and had reason to apprehend the danger to passengers thereby incurred. *Chicago & A. R. Co.* v. *Pillsbury*, 37 Alb. L. J. 27 (Ill.).

CARRIERS — TICKET — LIMITING LIABILITY.— A through ticket over several roads contained a printed stipulation limiting liability on baggage to $100, and a further stipulation that the road selling the ticket assumed no liability beyond its own lines. This road carried a trunk to the end of its line; there its employees, assisted by employees of the union depot at the terminus, loaded it on a truck, and placed on top of it a box containing acid insecurely packed. The depot hands rolled the truck into the baggage-room, and, in unloading it, spilled acid over this trunk and destroyed the contents. *Held*, that the loss was caused by the negligence of the receiving road, and that the limitation of liability to $100 was of no effect unless known to the purchaser of the ticket and assented to by him, because a passenger's ticket is ordinarily a check showing that fare has been paid, and he has no reason to suppose that he is entering into a contract. *Kansas City, etc., R. R. Co.* v. *Rudebaugh*, 15 Pac. Rep. 899 (Kan.).

The relation between the depot employees and the railroads is not stated, and it is not decided whether the liability of the first road would have continued, if the loss had occurred after the baggage was in the possession of a connecting line.

CONSTITUTIONAL LAW — PRIVILEGES AND IMMUNITIES. — A statute making it unlawful to practise medicine without a license, and providing that in order to obtain a license the applicant must exhibit proof either of having attended a reputable medical college, or of having practised medicine within the State con-

tinuously for ten years immediately prior to the passing of the act, is not unconstitutional as giving citizens of the State privileges or immunities not given to those of other States (U. S. Const., art. 4, sec. 2). *State* v. *Green*, 14 N. E. Rep. 352 (Ind.); s. c. 37 Alb. L. J. 43.

CONTRACT — WHERE BROKEN. — A press association doing business in London was sued in a contract by a patron in Dublin for negligently furnishing false news. The locality of the breach became material, and it was held that the contract was broken on the receipt of false news in Dublin, not on the delivery of it to the postal authorities in London. *Gray* v. *Press Association*, 21 Irish L. T. Rep. 73.

EQUITY JURISDICTION — BILL OF PEACE. — Plaintiff owned certain picnic grounds in the defendant village, which passed an ordinance of doubtful validity, punishing the keeping of public grounds for picnics or any purpose whereby disorderly people are congregated, as a nuisance. Seven prosecutions for violating the ordinance were instituted against the plaintiff. Under one he was convicted, and the other six were still pending. *Held*, equity will not enjoin the other prosecutions. *Poyer* v. *Village of Desplaines*, 37 Alb. L. J. 36 (Ill.). See *supra*, p. 255.

EVIDENCE — BOOK ENTRIES. — A material issue in a cause was whether the defendant's bank clerk had turned over certain collateral notes to the teller. The books showed that the clerk had so done. He testified that he had examined the entries, that they were in his handwriting, and that it was the custom to hand over the collaterals as the entries indicated. He also testified under objection that he did not speak from recollection, but that he was led to think, from seeing the entry in his handwriting, that he turned over the collaterals. This testimony was allowed, the court saying that "these entries, being made contemporaneously with the act done, were original evidence, — part of the *res gestæ;* and although it was necessary to call the party who made them, he being alive, his failure to recollect the transaction does not impair its probative force, he having shown that he kept his books correctly . . . it is really immaterial whether he was able to do more than verify his entries, and prove his invariable custom." *Mathias* v. *O'Neill*, 6 S. W. Rep. 253 (Mo.).

It is not strictly correct to say that book entries are admissible because they are part of the *res gestæ*. They are admissible for reasons peculiar to themselves, whether they are part of the *res gestæ* or not. The error is due largely to the statements in 1 Greenleaf on Evidence, §§ 115–120.

FRAUDULENT CONVEYANCES. — A chattel mortgage was executed by an insolvent, in ignorance of her financial situation, to an antecedent creditor. *Held*, that other creditors could not set the conveyance aside, either under a special statute of South Carolina or under the statute of Elizabeth. *Wietz* v. *Potter*, 32 Fed. Rep. 888.

FRAUDULENT CONVEYANCE, BY A GRANTEE BACK TO HIS FRAUDULENT GRANTOR. — A purchased land, which in order to keep from his creditors he caused to be conveyed directly to B. B becoming indebted to C, to protect the land, conveyed it back to A. A, hoping to obtain a homestead exemption in part of the land, conveyed the rest back to B in trust for A's wife (who had no notice of the fraud) in consideration of her giving up the right to dower in other lands. C filed a bill in equity to subject the land to his debt. *Held*, the conveyance was fraudulent as against C, for A had no right to a conveyance. The land is liable to C's debt, with the exception of the portion conveyed in trust for A's wife, she being a purchaser for value without notice. *Keel* v. *Larkin*, 3 So. Rep. 296 (Ala.).

FRAUDULENT CONVEYANCES — MARRIAGE SETTLEMENT. — Fraud cannot be presumed in an action to set aside a marriage settlement, but must be proved by clear and satisfactory evidence to have been concurred in by both parties; and this is so, irrespective ot the amount of the husband's indebtedness, and even though his whole estate is included in the settlement. *Noble* v. *Davies*, 4 S. E. Rep. 206 (Va.).

GENERAL AVERAGE — PASSENGERS' BAGGAGE. — The libellant in an admiralty case seeks compensation for damage by water to his baggage, caused in putting out a fire in the compartment of an iron steam-ship where passengers' baggage was stored. *Held*, that the damage to the baggage was a necessary sacrifice, because of a great and common danger, and the libellant was therefore entitled to compensation, although, if some one else's property had alone been sacrificed, the baggage in

question could not have been called upon to contribute in the general average. This is a clear exception to the ordinary rule of reciprocity, viz., that compensation cannot be given where contribution could not have been required; but passengers' baggage is so excepted in English and American law, probably because of the annoyance which would otherwise be caused the passenger if his baggage could be detained until appraisal, with a view to an adjustment. This reason is, however, inapplicable when the passenger is himself seeking compensation, and the libellant here must indirectly contribute by a *pro rata* deduction from his actual damage according to the general average charge. *Heye* v. *North German Lloyd*, 33 Fed. Rep. 60.

INSURANCE BY MORTGAGEE — SUBROGATION. — A agreed to sell land and buildings to B, taking in return a certain sum in cash, or its equivalent, and a mortgage for the remainder of the purchase price. It was further stipulated that, upon execution of the conveyance, a policy of insurance previously taken by A upon the buildings should be assigned to B, who should reassign it to A as collateral security upon the mortgage. In the interim the policy should remain for their joint protection on the buildings. The vendee agreed to pay all subsequent assessments upon the policy. The buildings burned, the company paid the policy, and demanded to be subrogated to the rights of A as mortgagee. It was not clear whether the property was burned before the agreement was executed; but, assuming that it was, the court held that the company had no right to subrogation, since the agreement clearly showed the intention that the insurance should be applied to reduce *pro tanto* B's debt. (See *Kernochan* v. *Ins. Co.*, 17 N. Y. 428; *Hay* v. *Ins. Co.*, 77 N. Y. 235; *Clinton* v. *Ins. Co.*, 45 N. Y. 454; Sheldon on Subrogation, § 235.) *Nelson* v. *Bound Brook Mut. F. Ins. Co.*, 11 Atl. Rep. 681 (N. J.), reversing 41 N. J. Eq. 485.

MALICIOUS PROSECUTION — ENTRY OF NOLLE PROS. — The entry of a *nolle pros.* is such an ending of the case as to entitle the defendant to sue for malicious prosecution, if the cause of action is otherwise complete. *Murphy* v. *Moore*, 11 Atl. Rep. 665 (Pa.). See *Bell* v. *Mathews*, 16 Pac. Rep. 97 (Kan.).

MARRIED WOMAN'S SEPARATE ESTATE — LIABILITY ON NOTE. — A married woman gave her note for money borrowed for the purpose of, and actually applied in making repairs upon her separate estate. The lender of the money did not lend it in the faith of its being expended in repairs. *Held*, she was not liable. *Sellers* v. *Heinbaugh*, 11 Atl. Rep. 550 (Pa.).

MORTGAGE — LEASE BY MORTGAGOR. — A mortgagor, who had agreed to convey to the mortgagee, for further security, "any property hereafter acquired," leased the whole mortgaged property to the defendant (the "Pan-Handle Co."). The mortgagee, because of default of the mortgagor, now brings suit, asking that the road be sold under a foreclosure, and that he may have the benefit of the lessee's covenants with the mortgagor. *Held*, that the lease was not after-acquired property to which the mortgagee was entitled under the mortgage; nor was it possible, on general principles, in the absence of agreement between mortgagee and lessee, to give the former the benefit of the lease. His only remedy "is to foreclose upon default of the mortgagor, or to take possession of the premises, and thereby place himself in position to obtain the future profits. Either step operates as an eviction of the tenant by title paramount, and leaves him at liberty to terminate the lease and quit." *Moran* v. *Pittsburgh, C., & St. L. Ry. Co.*, 32 Fed. Rep. 878.

NEGLIGENCE — INJURY TO STOCK FROM BARBED-WIRE FENCE. — The defendant constructed a barbed-wire fence between his pasture and the highway so negligently that the wires sagged down near the ground. The plaintiff's horse, straying along the highway, was entangled and killed trying to get into the pasture. Animals were by law allowed to run at large. *Held*, the defendant was liable. *Sisk* v. *Crump*, 14 N. E. Rep. 381 (Ind.).

NEGLIGENCE — UNLIKELY ACCIDENT. — A telegraph wire over defendant's railroad track having sagged a little, broke upon coming in contact with the head of an unusually tall brakeman standing upon an unusually high car. The wire upon breaking coiled around another brakeman, the plaintiff's intestate, dragging him from the car and killing him. Defendant had no notice of the sagging which made the wire dangerous. *Held*, the defendant was not liable. *Wabash, St. L., & P. Ry. Co.* v. *Locke*, 14 N. E. Rep. 391 (Ind.). The court cite with approval *Heaven* v. *Pender*, 11 Q. B. Div. 503.

PARTNERSHIP—DEED TO A FIRM UNDER THE FIRM-NAME. — Certain parties entered into an agreement whereby a real-estate business was to be carried on for the mutual benefit and profit of the parties thereto, under the name of the Grant's Pass Real Estate Association. In an action to quiet title it was held that the legal effect of the agreement was to form a partnership; and, whether or not a legal title passes by a conveyance to a partnership under the firm-name when this contains none of the names of the partners, the firm got an equitable interest good against a subsequent purchaser who took with notice of the deed to the firm.—*Kelley* v. *Bourne*, 16 Pac. Rep. 40 (Ore.).

QUASI-CONTRACT — GOODS SOLD AND DELIVERED. — The defendant ordered certain school-books from the dealer with whom he was accustomed to trade. The latter, having gone out of the business, induced the plaintiff to supply the books. At the time the books were shipped the plaintiff sent to the defendant an invoice and letter showing who supplied the goods, but the defendant gave no attention to them, supposing the goods were supplied as before. *Held*, notice being given before the goods were converted, the defendant is liable, and cannot excuse himself by his negligence. *Barnes* v. *Shoemaker*, 14 N. E. Rep. 367 (Ind.).

STOCK—LIABILITY FOR UNPAID SUBSCRIPTION — BONA-FIDE PURCHASER — The defendant bank took as collateral security without notice, a number of certificates of stock in the plaintiff corporation, the subscription price of which had been paid only in part. The defendant surrendered these certificates for new ones identical in form issued to itself, and is now sued for an instalment of the subscription price. *Held*, the defendant is not liable. The court went upon grounds of public policy. *West Nashville Planing-Mill Co.* v. *Nashville Sav. Bank*, 6 S.W. Rep. 340 (Tenn.).

TRANSFER OF STOCK—NATIONAL BANKS. — Under the national banking act it is not the duty of an assignee of national bank shares to register his ownership in the transfer book of the bank in order to protect his assignor, who will otherwise be liable to contribute towards the liabilities of the bank. *Lessassier* v. *Kennedy*, 8 Sup. Ct. Rep. 244.

REVIEWS.

BRACTON'S NOTE-BOOK. A Collection of Cases decided in the King's Courts during the Reign of Henry the Third, annotated by a Lawyer of that Time, seemingly by Henry of Bratton. Edited by F. W. Maitland. London: C. J. Clay & Sons. Three volumes. 8 vo. xxiii and 337, 720, 723 pages.

The history of this book is a striking illustration of the indifference of English lawyers to the history of their law. In 1842 a manuscript containing about 2,000 decisions in the first half (1218–1240) of the reign of Henry III. was acquired by the British Museum. There, for forty years, this treasure lay neglected, until at last, its nature and value were discovered by a foreigner. In 1884, Professor Vinogradoff, of Moscow, in a letter to the "Athenæum," gave his reasons for thinking it probable that this collection of cases was compiled for Bracton, and annotated by him. Even now, however, the publication of the "Note-Book" is not the work of the English Government, nor even of a learned society, but the labor of love of a single scholar, who has already made very valuable contributions to the history of English law in his edition of "Pleas of the Crown," for the year 1221, and in two essays in the "Law Quarterly Review" upon "The Seisin of Chattels," and "The Mystery of Seisin."

The student of legal history cannot be too grateful for this publication. It diminishes materially the gap between 1200, when Palgrave's